Calendar No. 447

99TH CONGRESS
1ST SESSION

S. 1181

[Report No. 99–208]

To establish a program for the provision of home and community based services to elderly individuals.

IN THE SENATE OF THE UNITED STATES

MAY 21 (legislative day, APRIL 15), 1985

Mr. HATCH (for himself, Mr. KENNEDY, Mr. HEINZ, Mrs. HAWKINS, Mr. STAFFORD, Mr. BRADLEY, Mr. ROCKEFELLER, Mr. INOUYE, Mr. QUAYLE, Mr. LUGAR, Mr. MATHIAS, Mr. GARN, Mr. MELCHER, Mr. SARBANES, Mr. COHEN, Mr. PACKWOOD, Mr. BUMPERS, Mr. GRASSLEY, Mr. METZENBAUM, Mr. MATSUNAGA, Mr. SIMON, Mr. PELL, Mr. THURMOND, and Mr. KERRY) introduced the following bill; which was read twice and referred to the Committee on Labor and Human Resources

DECEMBER 4 (legislative day, DECEMBER 2), 1985

Reported by Mr. HATCH, with amendments

[Omit the part struck through and insert the part printed in italic]

A BILL

To establish a program for the provision of home and community based services to elderly individuals.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

That this Act may be cited as the "Home and Community Based Services for the Elderly Act of 1985".

SEC. 2. (a) Part A of title XIX of the Public Health Service Act is amended by adding at the end thereof the following:

"SUBPART 2—HOME AND COMMUNITY BASED SERVICES

"AUTHORIZATIONS OF APPROPRIATIONS

~~"SEC. 1910.~~ *"SEC. 1910C.* For the purpose of allotments to States to carry out the activities described in section ~~1910C,~~ *1910F,* there are authorized to be appropriated $100,000,000 for fiscal year ~~1986,~~ *1987,* $100,000,000 for fiscal year ~~1987,~~ *1988,* and $100,000,000 for fiscal year ~~1988.~~ *1989.*

"ALLOTMENTS

~~"SEC. 1910A.~~ *"SEC. 1019D.* (a)(1) Except as provided in paragraph (2), the Secretary shall allot to each State for each fiscal year from the amounts appropriated under section ~~1910~~ *1910C* for such fiscal year an amount equal to the product of—

"(A) the total amount appropriated for such fiscal year, multiplied by

"(B) the ratio (stated as a percentage) that the total number of elderly individuals residing in the State bears to the total number of elderly individuals residing in the United States, multiplied by

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"(C) the quotient of—

"(i) the ratio (stated as a percentage) that the total number of elderly individuals residing in the State bears to the total population of the State, divided by

"(ii) the ratio (stated as a percentage) that the total number of elderly individuals residing in the United States bears to the total population of the United States.

"(2) Notwithstanding paragraph (1)—

"(A) the total amount of the allotment for each of the several States, the District of Columbia, and Puerto Rico for each fiscal year shall not be less than one-half of 1 percent of the total amount appropriated under section ~~1910~~ *1910C* for such fiscal year;

"(B) the total amount of the allotment for each of the Virgin Islands, Guam, and the Trust Territory of the Pacific Islands for each fiscal year shall not be less than one-fourth of 1 percent of the total amount appropriated under section ~~1910~~ *1910C* for such fiscal year; and

"(C) the total amount of the allotment for each of American Samoa and the Commonwealth of the Northern Mariana Islands for each fiscal year shall not be less than one-sixteenth of 1 percent of the total amount

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appropriated under section ~~1910~~ *1910C* for such fiscal year.

"(3) For purposes of this section, the term 'elderly individual' means an individual who has attained the age of 65 years.

"(b) To the extent that all the funds appropriated under section ~~1910~~ *1910C* for a fiscal year and available for allotment in such fiscal year are not otherwise allotted to States because—

"(1) one or more States have not submitted an application or description of activities in accordance with section ~~1910D~~ *1910G* for such fiscal year;

"(2) one or more States have notified the Secretary that they do not intend to use the full amount of their allotment; or

"(3) some State allotments are offset or repaid under section 1906(b)(3) (as such section applies to this subpart pursuant to section ~~1910D(e));~~ *1910G(e));*

such excess shall be allotted among each of the remaining States in proportion to the amount otherwise allotted to such States for such fiscal year without regard to this subsection.

"(c)(1) If the Secretary—

"(A) receives a request from the governing body of an Indian tribe or tribal organization within any

State that funds under this subpart be provided directly by the Secretary to such tribe or organization, and

"(B) determines that the members of such tribe or tribal organization would be better served by means of grants made directly by the Secretary under this subpart,

the Secretary shall reserve from amounts which would otherwise be allotted to such State under subsection (a) for a fiscal year the amount determined under paragraph (2).

"(2) The Secretary shall reserve for the purpose of paragraph (1) from amounts that would otherwise be allotted to such State under subsection (a) an amount equal to the amount which bears the same ratio to the State's allotment for the fiscal year involved under subsection (a) as the total number of elderly individuals in the tribe during such fiscal year bears to the total number of elderly individuals residing in the State during such fiscal year.

"(3) The amount reserved by the Secretary on the basis of a determination under this subsection shall be granted to the Indian tribe or tribal organization serving the elderly individuals for whom such a determination has been made.

"(4) In order for an Indian tribe or tribal organization to be eligible for a grant for a fiscal year under this subsection, it shall submit to the Secretary a plan for such fiscal year which meets such criteria as the Secretary may prescribe.

"PAYMENTS UNDER ALLOTMENTS TO STATES

~~"SEC. 1910B.~~ *"SEC. 1910E.* (a) For each fiscal year, the Secretary shall make payments, as provided by section 6503(a) of title 31, United States Code, to each State from its allotment under section ~~1910A~~ *1910D* (other than any amount reserved under subsection (c) of such section) from amounts appropriated for that fiscal year.

"(b) Any amount paid to a State for a fiscal year and remaining unobligated at the end of such year shall remain available for the next fiscal year to such State for the purposes for which it was made.

"USE OF ALLOTMENTS

~~"SEC. 1910C.~~ *"SEC. 1910F.* (a)(1) Except as provided in subsections (b) and (d), amounts paid to a State under section ~~1910B~~ *1910E* from its allotment under section ~~1910A~~ *1910D* for any fiscal year may be used to provide home and community based services to elderly individuals. Such services may include activities to (A) identify and locate elderly individuals eligible for such services, (B) plan and manage services to be provided to such individuals, (C) educate the public and medical and social service professionals concerning the availability of such services, (D) encourage and enhance the participation of families and voluntary organizations in the provision of such services, (E) train personnel to provide such services through the use of model curricula which in-

clude proper standards and quality assurance mechanisms for such training, and (F) coordinate long-term care services provided to elderly individuals by public and private institutions and voluntary organizations in order to eliminate duplication in the provision of such services and the provision of services under this subpart and to maximize the use of funds provided under this subpart and other Federal laws.

"(2) A State may use amounts paid to it under section ~~1910B~~ *1910E* to provide home and community based services to elderly individuals through grants to eligible organizations who have entered into contracts under section 1876(g) of the Social Security Act for projects to demonstrate the cost effectiveness of providing home and community based services to elderly individuals as part of comprehensive health care services provided by such organizations. As a condition of receipt of a grant under this paragraph, a State shall require an eligible organization to use amounts provided under such grant only for the provision of home and community based services to elderly individuals.

"(b) Of the amounts paid to a State under section ~~1910B~~ *1910E*—

"(1) not more than 50 percent of such amounts may be used by the State in fiscal year ~~1986~~ *1987* to plan services and activities to be provided under this subpart; and

"(2) not more than 10 percent of such amounts may be used by the State in any fiscal year beginning after fiscal year ~~1986~~ *1987* to plan such services and activities.

"(c) The Secretary, if requested by a State, shall provide technical assistance to the State in planning and operating activities to be carried out under this subpart.

"(d) A State may not use amounts paid to it under section ~~1910B~~ *1910E* to—

"(1) provide inpatient services;

"(2) make cash payments to intended recipients of services, except that a State may use amounts paid to it under section ~~1910B~~ *1910E* to establish a system under which—

"(A) the State provides vouchers to elderly individuals which may be used by such individuals to ~~pay~~ *make payments for home and community based services to* providers of ~~home and community based~~ *such* services ~~for such services;~~ *who meet established standards for training and the delivery of such services;* and

"(B) such providers present such vouchers to the State for redemption for cash payments for the provision of such services;

"(3) purchase or improve land, purchase, construct, or permanently improve (other than minor remodeling) any building or other facility, or purchase major medical equipment;

"(4) satisfy any requirement for the expenditure of non-Federal funds as a condition for the receipt of Federal funds; or

"(5) provide services under this subpart to an individual if the total cost to the Federal Government of providing such services would exceed the total cost of institutionalization of such individual.

The Secretary may waive the limitation contained in paragraph (3) upon the request of a State if the Secretary finds that there are extraordinary circumstances to justify the waiver and that granting the waiver will assist in carrying out this subpart.

"APPLICATION AND DESCRIPTION OF ACTIVITIES; REQUIREMENTS

~~"SEC. 1910D.~~ *"SEC. 1910G.* (a)(1) In order to receive an allotment for a fiscal year under section ~~1910A~~ *1910D* each State shall submit an application to the Secretary. Each such application shall be in such form and submitted by such date as the Secretary shall require.

"(2) Each application required under paragraph (1) for an allotment under section ~~1910A~~ *1910D* for a fiscal year

shall contain assurances that the State will meet the requirements of subsection (b).

"(b) As part of the annual application required by subsection (a) for an allotment for any fiscal year, the chief executive officer of each State shall—

"(1) certify that the State agrees to use the funds allotted to it under section ~~1910A~~ *1910D* in accordance with the requirements of this subpart;

"(2) provide assurances that such chief executive officer will establish an appropriate plan and mechanism to coordinate activities of State agencies which administer programs relating to health, welfare, rehabilitation, and the elderly with the provision of home and community based services by State and local agencies and public and private institutions and organizations;

"(3) provide assurances that such chief executive officer will designate or establish a State agency to administer funds provided under this subpart and the plan developed under paragraph (2) in a manner which will insure, to the maximum extent feasible, that services provided to elderly individuals under this subpart will not duplicate services to elderly individuals provided under other provisions of Federal law;

"(4) certify that the State will coordinate the provision of home and community based services with funds provided under this subpart with activities conducted to provide such services by voluntary, religious, and community organizations and local governments;

"(5) provide assurances that the State will make reasonable efforts to provide services under this subpart through agencies and providers rendering services under the State's medicaid plan approved under title XIX of the Social Security ~~Act;~~ *Act or through agencies and providers rendering services under the State plan approved under title III of the Older Americans Act of 1965;*

"(6) provide assurances that the State will, to the maximum extent feasible, provide home and community based services under this subpart to elderly individuals who are low income individuals and who are not receiving equivalent home and community based services under the State's medicaid plan approved under title XIX of the Social Security Act;

"(7) provide assurances that, for any period in which a waiver is in effect in the State under section 1915(c) of the Social Security Act, funds paid to the State under section ~~1910B~~ *1910E* will be used to provide home and community based services which do not

duplicate services provided pursuant to such waiver; and

"(8) certify that the State agrees that Federal funds made available under section ~~1910B~~ *1910E* for any period will be so used as to supplement and increase the level of State, local, and other non-Federal funds that would in the absence of such Federal funds be made available for the programs and activities for which funds are provided under that section and will in no event supplant such State, local, and other non-Federal funds.

"(d) The chief executive officer of a State shall, as part of the application required by subsection (a) for any fiscal year, also prepare and furnish the Secretary (in accordance with such form as the Secretary shall provide) with a description of the intended use of the payments the State will receive under section ~~1910B~~ *1910E* for the fiscal year for which the application is submitted, including information on the programs and activities to be supported and services to be provided. The description shall be made public within the State in such manner as to facilitate comment from any person (including any Federal or other public agency) during development of the description and after its transmittal. The description shall be revised (consistent with this section) throughout the year as may be necessary to reflect substan-

tial changes in the programs and activities assisted by the State under this subpart, and any revision shall be subject to the requirements of the preceding sentence.

"(e) Except where inconsistent with the provisions of this subpart, the provisions of section 1903(b), section 1906(a), paragraphs (1) through (5) of section 1906(b), and sections 1907, 1908, and 1909 shall apply to this subpart in the same manner as such provisions apply to subpart 1 of this part.

"(f) Each report submitted by a State to the Secretary under section 1906(a)(1) (as such section applies to this subpart pursuant to subsection (e) of this section) shall include an analysis of the cost effectiveness of providing home and community based services to elderly individuals under this subpart.

"DEFINITIONS

~~"SEC. 1910E.~~ *"SEC. 1910H.* For purposes of this subpart:

"(1) The term 'elderly individual' (other than for the purposes of section ~~1910A)~~ *1910D)* means an individual who has attained the age of 65 years and who—

"(A) resides at home and is at risk of institutionalization because of limitations on the ability of such individual to function independently;

"(B) is a patient in a hospital who is at risk of prolonged hospitalization, and who could be cared for in a long-term care institution or who could return to the community if home and community based services are available; or

"(C) is a patient in a skilled nursing facility or an intermediate care facility who could return to the community if home and community based services are available.

"(2) The terms 'Indian tribe' and 'tribal organization' have the same meaning given such terms in section 4(b) and section 4(c) of the Indian Self-Determination and Education Assistance Act.".

(b) Such part is further amended—

(1) by striking out the heading of such part and inserting in lieu thereof the following:

"PART A—PREVENTIVE HEALTH, HEALTH SERVICES, AND HOME AND COMMUNITY BASED SERVICES";

(2) by inserting after the heading of such part the following:

"Subpart 1—Preventive Health and Health Services"; and

(3) by striking out "this part" and inserting in lieu thereof "this subpart" each place it appears in sections 1902(d)(1)(A), 1902(d)(1)(B), 1904(a)(1), 1904(a)(3),

1904(b), 1905(c)(1), ~~1905(c)(3),~~ *1905(c)(2), 1905(c)(4),* 1905(c)(6), ~~1905(c)(8),~~ and 1905(d).

SEC. 3. This Act and the amendments made by this Act shall take effect on October 1, ~~1985.~~ *1986.*

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